

Appendix to Part 2

The following three appendices set eligibility standards for trial, appellate, and post-conviction counsel in capital cases.

Appendix 2A Standards for Lead and Associate Trial Counsel in Capital Cases

2A.1 (App.) Trial Qualifications and Experience

(a) Lead Counsel

To be eligible to be appointed as lead counsel in a capital case, an attorney must demonstrate that he or she has the required legal knowledge and skill necessary for representation as lead counsel in a capital case and will apply that knowledge and skill with appropriate thoroughness and preparation, and that he or she meets the requirements listed below. However, if an attorney cannot meet one or more of the requirements set forth below, the IDS Director may waive any requirement(s) pursuant to paragraph 2A.1(c) (App.) below.

A candidate for appointment must demonstrate that he or she:

- (i) has at least six years of criminal or civil litigation experience; or has at least four years of concentrated criminal litigation experience as a public defender, prosecutor, or attorney in a capital defense organization;
- (ii) is familiar with ethics requirements, current criminal practice and procedure in North Carolina, and capital jurisprudence established by the Supreme Court of the United States and Supreme Court of North Carolina;
- (iii) has participated as trial counsel in at least ten jury trials to verdict or to hung jury;
- (iv) has tried a capital case to verdict or to hung jury as lead defense counsel; or has tried two capital cases to verdict or to hung jury as associate defense counsel; or has represented to disposition at the trial level defendants in four homicides cases; and
- (v) has substantial familiarity with and experience in the use of expert witnesses and scientific and medical evidence, including mental health, social history, and pathology evidence.

(b) Associate Counsel

To be eligible to be appointed as associate counsel in a capital case, an attorney must demonstrate that he or she has the required legal knowledge and skill necessary for representation as associate counsel in a capital case and will apply that knowledge and skill with appropriate thoroughness and preparation, and that he or she meets the requirements listed below. However, if an attorney cannot meet one or more of the requirements set forth below, the IDS Director may waive any requirement(s) pursuant to paragraph 2A.1(c) (App.) below.

A candidate for appointment must demonstrate that he or she:

- (i) has at least three years of criminal or civil litigation experience;

(ii) is familiar with ethics requirements, current criminal practice and procedure in North Carolina, and capital jurisprudence established by the Supreme Court of the United States and Supreme Court of North Carolina;

(iii) has participated as trial counsel in at least four jury trials to verdict or to hung jury; or has spent two years in practice in a capital defense organization; and

(iv) has substantial familiarity with scientific and medical evidence, including mental health, social history, and pathology evidence.

(c) Waiver

If an attorney cannot meet one or more of the requirements set forth above, the IDS Director, upon determination that the attorney has the required legal knowledge and skill necessary for representation as lead or associate counsel in a capital case, and will apply that knowledge and skill with appropriate thoroughness and preparation, may either waive such requirement(s) or defer any requirement(s) for a reasonable time and in the interim place the attorney on the roster of qualified lead or associate counsel.

2A.2 (App.) Applications

(a) Application

An attorney who seeks to be appointed as lead or associate counsel in a capital case shall submit to the IDS Director an application on a form prescribed by the IDS Director. The application shall require the attorney to demonstrate that he or she has fully satisfied the requirements set forth above. The attorney shall specify for which Judicial Division roster(s) of qualified lead counsel and associate counsel he or she seeks to be considered. The attorney shall also identify any requirement(s) that he or she requests be waived, and shall set forth in detail his or her trial experience or other exceptional qualifications that justify waiver.

(b) Required Submissions

In support of an application, an attorney shall submit to the IDS Director:

(i) a list of all first-degree murder cases in which the attorney has appeared within the past five years, including the name of the case, the county, the trial judge, the prosecuting attorney, any co-counsel, the result or verdict, and any reported appellate decision in the case;

(ii) at least two examples of substantial written legal work product prepared by the attorney at the trial or appellate level in connection with separate felony cases;

(iii) a description of specialized criminal defense training programs attended within the past five years, such as those sponsored by the North Carolina Academy of Trial Lawyers, the North Carolina Bar Association, or the Center for Death Penalty Litigation;

(iv) the names, addresses, and phone numbers of two superior court judges, two prosecutors, and two defense attorneys familiar with the attorney's work as an advocate; and

(v) any additional material that may assist the IDS Director in evaluating the applicant's trial qualifications and experience.

(c) Waiver or Deferral of Required Submissions

If an attorney has not provided each of the above items, the IDS Director, upon determination that the attorney has the required legal knowledge and skill necessary for representation as lead or associate counsel in a capital case, and will apply that knowledge and skill with appropriate thoroughness and preparation as either lead or associate counsel, may either waive such submission(s) or defer submission of any item(s) for a reasonable time and in the interim place the attorney on the roster of qualified lead or associate counsel.

(d) Creation of Capital Trial Roster

Following review of each application to determine that it is complete, the IDS Director will investigate the contents of the submission, contact references, and determine whether the attorney is qualified for appointment as lead or associate counsel in a capital case. The IDS Director shall thereafter create and maintain a roster of attorneys qualified for and willing to accept appointments as lead and associate counsel in each Judicial Division.

(e) Appeal to the IDS Commission

If the IDS Director determines that an attorney is not qualified for appointment as lead or associate counsel in a capital case or otherwise declines to place the attorney's name on the capital trial roster, the attorney may make a written request for a review of the IDS Director's decision from a committee of the IDS Commission designated by the IDS Commission to conduct such review.

[Subsection (e) amended effective February 10, 2006]

2A.3 (App.) Retention and Eligibility

(a) On-Going Training

To remain eligible for appointment as lead or associate counsel in a capital case, an attorney must attend capital training sessions as prescribed by the IDS Director, and consult regularly and frequently with the IDS Director with respect to each capital case to which the attorney is appointed.

(b) Removal from Roster

The IDS Director may remove from the roster of attorneys qualified for appointment as lead or associate counsel in a capital case any attorney who has ignored requirements for appointment as lead or associate counsel; has failed to continue to demonstrate that he or she has the required legal knowledge and skill necessary for representation as lead or associate counsel; or has failed to continue to demonstrate that he or she is willing to apply that knowledge and skill with appropriate thoroughness and preparation as lead or associate counsel. The IDS Director may also remove an attorney from a roster if, as part of a periodic review of the roster, the IDS Director determines that a smaller roster of attorneys will better serve the goals of ensuring the best possible representation of

indigent capital defendants and of delivering quality services in the most efficient and cost-effective manner. If the IDS Director removes an attorney from the capital trial roster, the attorney may make a written request for a review of the IDS Director's decision from a subcommittee of the IDS Commission designated by the IDS Commission to conduct such review.

[Subsection (b) amended effective February 10, 2006]

Appendix 2B

Standards for Appellate Counsel in Capital Cases

2B.1 (App.) Appellate Qualifications and Experience

(a) Appellate Counsel

To be eligible to be appointed as appellate counsel on direct appeal in a capital case, an attorney must demonstrate that he or she has the required legal knowledge and skill necessary for representation as appellate counsel in a capital case and will apply that knowledge and skill with appropriate thoroughness and preparation, and that he or she meets the requirements listed below. However, if an attorney cannot meet one or more of the requirements set forth below, the IDS Director may waive any requirement(s) pursuant to paragraph 2B.1(b) (App.) below.

A candidate for appointment must demonstrate that he or she:

- (i) has at least five years of criminal, appellate, or post-conviction experience; or has at least three years of concentrated criminal litigation experience as a public defender, prosecutor, or attorney in a capital defense organization; or is currently serving as the Appellate Defender or an Assistant Appellate Defender;
- (ii) is familiar with ethics requirements, current criminal practice and procedure in North Carolina, and capital jurisprudence established by the Supreme Court of the United States and the Supreme Court of North Carolina;
- (iii) is familiar with practice and procedure in the trial and appellate courts of North Carolina; and
- (iv) has had primary responsibility for the appeal of at least five felony convictions in any state or federal court, at least three of which were on behalf of the defendant, and at least three of which were orally argued by the attorney.

(b) Waiver

If an attorney cannot meet one or more of the requirements set forth above, the IDS Director, upon determination that the attorney has the required legal knowledge and skill necessary for representation as appellate counsel in a capital case, and will apply that knowledge and skill with appropriate thoroughness and preparation, may either waive such requirement(s) or defer any requirement(s) for a reasonable time and in the interim place the attorney on the roster of qualified appellate counsel.

2B.2 (App.) Applications

(a) Application

An attorney who seeks to be appointed as appellate counsel in a capital case shall submit to the Appellate Defender an application on a form prescribed by the IDS Director. The application shall require the attorney to demonstrate that he or she has fully satisfied the requirements set forth above. The attorney shall also identify any requirement(s) that he or she requests be waived, and shall set forth in detail his or her appellate experience or other exceptional qualifications that justify waiver.

(b) Required Submissions

In support of an application, an attorney shall submit to the Appellate Defender:

- (i) at least two appellate briefs, written exclusively or primarily by the applicant, the opposing briefs, and the appellate court's decision;
- (ii) a description of specialized capital or other criminal appellate advocacy, or other criminal practice program, attended in the past five years;
- (iii) the names, addresses, and phone numbers of two prosecutors and two defense attorneys, current or former, including at least one appellate adversary, who are familiar with the applicant's work as an advocate; and
- (iv) any additional material that may assist the IDS Director in evaluating the applicant's appellate qualifications and experience.

The applicant may submit the name, address, and phone number of one appellate judge, if the judge is familiar with the applicant's work as an advocate.

(c) Waiver or Deferral of Required Submissions

If an attorney has not provided each of the above items, the IDS Director, upon determination that the attorney has the required legal knowledge and skill necessary for representation as appellate counsel in a capital case, and will apply that knowledge and skill with appropriate thoroughness and preparation as appellate counsel, may either waive such submission(s) or defer submission of any item(s) for a reasonable time and in the interim place the attorney on the roster of qualified appellate counsel.

(d) Creation of Capital Appeals Roster

Following review of each application to determine that it is complete, the Appellate Defender will investigate the contents of the submission, contact references, and make any further investigation deemed necessary. The Appellate Defender shall then make a recommendation to the IDS Director as to whether the attorney is qualified for appointment as appellate counsel in a capital case. The IDS Director shall make the final determination as to whether an attorney should be included on the capital appeals roster. The Appellate Defender shall thereafter create and maintain a roster of attorneys qualified for and willing to accept appointments as appellate counsel.

(e) Appeal to the IDS Commission

If the IDS Director determines that an attorney is not qualified for appointment as appellate counsel in a capital case or otherwise declines to place the attorney's name on

the capital appeals roster, the attorney may make a written request for a review of the IDS Director's decision from a committee of the IDS Commission designated by the IDS Commission to conduct such review.

[Subsection (e) amended effective February 10, 2006]

2B.3 (App.) Retention and Eligibility

(a) On-Going Training

To remain eligible for appointment as counsel on a capital appeal, an attorney must attend and successfully complete training sessions as prescribed by the Appellate Defender, and consult regularly and frequently with the Appellate Defender with respect to each capital case to which the attorney is appointed.

(b) Removal from Roster

The IDS Director may remove from the roster of attorneys qualified for appointment as appellate counsel in a capital case any attorney who has ignored requirements for appointment as appellate counsel; has failed to continue to demonstrate that he or she has the required legal knowledge and skill necessary for representation as appellate counsel; or has failed to continue to demonstrate that he or she is willing to apply that knowledge and skill with appropriate thoroughness and preparation as appellate counsel. The IDS Director may also remove an attorney from the roster if, as part of a periodic review of the roster, the IDS Director determines that a smaller roster of attorneys will better serve the goals of ensuring the best possible representation of indigent capital defendants and of delivering quality services in the most efficient and cost-effective manner. If the IDS Director removes an attorney from the capital appeals roster, the attorney may make a written request for a review of the IDS Director's decision from a subcommittee of the IDS Commission designated by the IDS Commission to conduct such review.

[Subsection (b) amended effective February 10, 2006]

Appendix 2C Standards for State Post-Conviction Counsel in Capital Cases

2C.1 (App.) State Post-Conviction Qualifications and Experience

(a) State Post-Conviction Counsel

To be eligible to be appointed as counsel on a Motion for Appropriate Relief and any appeal therefrom in a capital case, an attorney must demonstrate that he or she has the required legal knowledge and skill necessary for representation as post-conviction counsel in a capital case and will apply that knowledge and skill with appropriate thoroughness and preparation, and that he or she meets the requirements listed below.

However, if an attorney cannot meet one or more of the requirements set forth below, the IDS Director may waive any requirement(s) pursuant to paragraph 2C.1(b) (App.) below.

A candidate for appointment must demonstrate that he or she:

- (i) has at least five years criminal or civil trial experience; or has at least five years criminal or civil appellate experience; or has at least five years state or federal post-conviction experience; or has at least three years of concentrated criminal litigation experience as a public defender, prosecutor, or attorney in a public or private capital defense organization; or is currently in practice in a capital defense organization;
- (ii) is familiar with ethics requirements, current criminal practice and procedure in North Carolina, and capital jurisprudence established by the Supreme Court of the United States and the Supreme Court of North Carolina;
- (iii) is familiar with the practice and procedure of the trial and appellate courts of North Carolina, including the practice and procedure for filing a Motion for Appropriate Relief, and with the practice and procedure of the federal courts with regard to federal habeas corpus petitions;
- (iv) has had primary responsibility for representing a party in at least three criminal or civil appeals, or criminal post-conviction proceedings; and
- (v) has substantial familiarity with and experience in the use of expert witnesses and scientific and medical evidence, including mental health, social history, and pathology evidence.

(b) Waiver

If an attorney cannot meet one or more of the requirements set forth above, the IDS Director, upon determination that the attorney has the required legal knowledge and skill necessary for representation as post-conviction counsel in a capital case, and will apply that knowledge and skill with appropriate thoroughness and preparation, may either waive such requirement(s) or defer any requirement(s) for a reasonable time and in the interim place the attorney on the roster of qualified post-conviction counsel.

2C.2 (App.) Applications

(a) Application

An attorney who seeks to be appointed as post-conviction counsel in a capital case shall submit to the IDS Director an application on a form prescribed by the IDS Director. The application shall require the attorney to demonstrate that he or she has fully satisfied the requirements set forth above. The attorney shall also identify any requirement(s) that he or she requests be waived, and shall set forth in detail his or her criminal or civil litigation, appellate and/or post-conviction experience, or other exceptional qualifications that justify waiver.

(b) Required Submissions

In support of an application, an attorney shall submit to the IDS Director:

- (i) at least two examples of substantial written legal work product prepared by the attorney in connection with separate cases, or at least two appellate briefs, written

exclusively or primarily by the applicant, the opposing briefs, and the appellate court's decision in the case;

(ii) a description of specialized trial, appellate, or post-conviction capital defense training programs attended in the past five years;

(iii) the names, addresses, and phone numbers of two prosecutors and two defense attorneys, current or former, including at least one adversary, who are familiar with the applicant's work as an advocate; and

(iv) any additional material that may assist the IDS Director in evaluating the applicant's post-conviction qualifications and experience.

The applicant may submit the name, address, and phone number of one judge, if the judge is familiar with the applicant's work as an advocate.

(c) Waiver or Deferral of Required Submissions

If an attorney has not provided each of the above items, the IDS Director, upon determination that the attorney has the required legal knowledge and skill necessary for representation as post-conviction counsel in a capital case, and will apply that knowledge and skill with appropriate thoroughness and preparation as post-conviction counsel, may either waive such submission(s) or defer submission of any item(s) for a reasonable time and in the interim place the attorney on the roster of qualified post-conviction counsel.

(d) Creation of Post-Conviction Roster

Following review of each application to determine that it is complete, the IDS Director will investigate the contents of the submission, contact references, and determine whether the attorney is qualified for appointment as post-conviction counsel in a capital case. The IDS Director shall thereafter create and maintain a roster of attorneys qualified for and willing to accept appointments as post-conviction counsel.

(e) Appeal to the IDS Commission

If the IDS Director determines that an attorney is not qualified for appointment as post-conviction counsel in a capital case or otherwise declines to place the attorney's name on the capital post-conviction roster, the attorney may make a written request for a review of the IDS Director's decision from a committee of the IDS Commission designated by the IDS Commission to conduct such review.

[Subsection (e) amended effective February 10, 2006]

2C.3 (App.) Retention and Eligibility

(a) On-Going Training

To remain eligible for appointment as counsel on an initial Motion for Appropriate Relief and any appeal therefrom, an attorney must attend and successfully complete capital training sessions as prescribed by the IDS Director, and consult regularly and frequently with the IDS Director with respect to each capital case to which the attorney is appointed.

(b) Removal from Post-Conviction Roster

The IDS Director may remove from the roster of attorneys qualified for appointment as post-conviction counsel in a capital case any attorney who has ignored requirements for appointment as post-conviction counsel; has failed to continue to demonstrate that he or she has the required legal knowledge and skill necessary for representation as post-conviction counsel; or has failed to continue to demonstrate that he or she is willing to apply that knowledge and skill with appropriate thoroughness and preparation as post-conviction counsel. The IDS Director may also remove an attorney from the roster if, as part of a periodic review of the roster, the IDS Director determines that a smaller roster of attorneys will better serve the goals of ensuring the best possible representation of indigent capital defendants and of delivering quality services in the most efficient and cost-effective manner. If the IDS Director removes an attorney from the capital post-conviction roster, the attorney may make a written request for a review of the IDS Director's decision from a subcommittee of the IDS Commission designated by the IDS Commission to conduct such review.

[Subsection (b) amended effective February 10, 2006]